

### **DETAILED ACTION**

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/18/09 has been entered. As directed claims 9 and 10 were amended, and no claims were added or cancelled, therefore this application currently has claims 2, 3, 5-7, 9 and 10 pending.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 2, 3, 5-7, 9 and 10 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Claim 9 recites the limitation "a dead space in which gas exhaled by the patient is located that is re-breathed by the patient in a subsequent inhalation by the patient" is indefinite as it is not clear what is being claimed.

5. Claim 9 recites the limitation "said bypass path" in the eighth line of the claim. There is insufficient antecedent basis for this limitation in the claim.

Art Unit: 3771

6. Claim 9 recites the limitation "a gas bypass path" in the tenth line of the claim. It is unclear if this "gas bypass path" is a new limitation or the same limitation as the "said bypass path" in the eighth line of the claim.

7. Claim 9 recites the limitation "at respective bypass connections" in the tenth line of the claim. There is insufficient antecedent basis for this limitation in the claim.

8. Claim 10 recites the limitation "a dead space in which gas exhaled by the patient is located that is re-breathed by the patient in a subsequent inhalation by the patient" is indefinite as it is not clear what is being claimed.

***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 2, 3, and 9 as best understood are rejected under 35 U.S.C. 102(b) as being anticipated by Westenskow (4,127,121).

11. Regarding claim 9, Westenskow discloses a method for reducing the carbon dioxide content in a dead volume in a breathing apparatus comprising the steps of; respiring a patient with a gas supplied via a primary flow path containing a dead space (fig. 1, between #2 and #8) in which gas exhaled by the patient is located and is re-breathed by the patient in a subsequent inhalation by the patient; generating a flow of gas, by way of an air circulator (7) from the patient through a bypass path (fig. 1, between #2 and #10) to bypass the dead space; connection a gas bypass path at

Art Unit: 3771

bypass connections (fig. 1, near #2 and #10) on opposite sides of the dead space and conducting gas through a carbon dioxide absorber (10) in the bypass path (fig. 1); and returning gas that has passed through the carbon dioxide absorber (10) from the bypass path to the primary gas flow path, with said gas that passed through said carbon dioxide absorber bypassing said dead volume in being inhaled by a patient.

12. Regarding claim 2, Westenskow discloses a method further comprising continuously generating the gas flow, but means of a air circulator (7) (fig. 1) (column 3, lines 21-22).

13. Regarding claim 3, Westenskow discloses a method further comprising conducting the gas flow past a gas monitor (3) (fig. 1) for at least one of qualitative and quantitative determination of a partial component in the gas (column 3, lines 25-29).

***Claim Rejections - 35 USC § 103***

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. Claims 5-7 and 10 as best understood are rejected under 35 U.S.C. 103(a) as being unpatentable over Westenskow (US 4,127,121) view of Perhag (The Reflector).

16. Regarding claim 10, Westenskow discloses an anesthesia apparatus comprising; a primary gas flow path with a first end (fig. 1 near #11) configured for gaseous connection to a ventilator (11) and a second end (fig. 1, near # 2) configured to communicate with the respiratory system of a patient (1), said primary gas flow path

Art Unit: 3771

having a dead space(fig. 1, between #2 and #11) in which gas exhaled by the patient is located that and is subsequently re-breathed by the patient in a subsequent inhalation; a bypass outlet (fig. 1, below #10) from primary gas flow path located at the first end, and a bypass inlet to first gas flow path located at the second end; a bypass flow path connected between the bypass outlet and bypass inlet that bypasses the dead space; and a carbon dioxide absorber (10) in series with a flow generator (7) in the bypass flow path that conducts gas from the bypass outlet through the carbon dioxide absorber and returns the gas to the primary gas flow path via the bypass inlet for inhalation by the patient. Westenskow does not disclose a reflector located in the dead space in the primary gas flow path, however, Perhag teaches a reflector in the dead space of an anesthesia apparatus (fig. 1). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the apparatus of Westenskow with a reflector as taught by Perhag in order to provide the advantage of using less of the costly anesthesia gas.

17. Regarding claim 5, Westenskow discloses a device comprising a gas monitor (3) connected in series with the flow generator (7) and the absorber (10) (fig. 1) for at least one of qualitative and quantitative determination of a partial component in the gas (column 3, lines 25-29).

18. Regarding claim 6, Westenskow discloses a device comprising a gas conditioner, in the form of a feedback control circuit used to replace oxygen in the system (fig. 1) (column 3, lines 25-26), connected in series with the flow generator and the absorber for conditioning of the flowing gas.

Art Unit: 3771

19. Regarding claim 7, Westenskow discloses a device wherein a gas conditioner is a gasifier (13) (fig. 1) for liquid anesthetic (column 3, lines 41-56).

***Response to Arguments***

20. Applicant's arguments with respect to claim 2, 3 and 9 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTOPHER BLIZZARD whose telephone number is (571)270-7138. The examiner can normally be reached on Monday thru Friday, 9:00AM -5:00PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571)2724835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Application/Control Number: 10/578,833  
Art Unit: 3771

Page 7

/CHRISTOPHER BLIZZARD/  
Examiner, Art Unit 3771

/Justine R Yu/  
Supervisory Patent Examiner, Art Unit 3771